

## **II. Claim Status**

The applicant cancels claims 1-23.

Claims 44-58 are pending.

Claims 1-43 and 59-71 are cancelled.

Claims 59-71 were cancelled by a preliminary amendment filed January 23, 2006 concurrent with entry into the US national stage.

Claims 44 and 58 are the only pending independent claims.

## **III. Summary of Rejections in Office Action**

At page 2 line 12 through page 10 line 9, the examiner rejects claims 1-3, 7, 10-23, 44-53, 57, and 58 under 35 USC 103(a) as being unpatentable over Deaton et al (US Patent No 6,292,786 B1 hereinafter “Deaton”) in view of Smith (US Pub No 2002/0103849 A1 hereinafter “Smith”).

At page 10 lines 10-13, page 11 lines 8-12, and page 11 line 19 through page 12 line 4, the examiner rejects claims 4-6, 8, 9, and 54-56 under 35 USC 103(a) as being unpatentable over Deaton in view of Smith and in further view of Klarfield et al. (US Pub No 2003/0067554 A1 hereinafter “Klarfield”).

## **IV. The Examiner’s Rejections of Claims 1-43**

The examiner’s rejections of claims 1-43 are moot because the applicant has cancelled claims 1-43.

## **V. The Rejections of Claims 44 and 58 as Being Unpatentable Over Deaton in View of Smith are Improper and Should be Withdrawn**

### **A. Summary**

Deaton is directed to a method and system for generating incentives based on substantially real-time product purchase information. Title. Deaton discloses “[a] method for use in marketing includes receiving at a remote location through the Internet, substantially real-time product purchase information from a retail store in conjunction with an identification code of a customer purchasing the products at a point-of-sale. The method also includes generating at the remote

location an incentive to be communicated to the identified customer and initiating communication of data relative to the incentive to the identified customer at the point-of-sale.” Abstract.

Specifically, Deaton discloses targeted real time marketing communicating between a POS CS and a remote central server CS. Deaton discloses a POS CS and POS terminal, and stored incentive offer criteria relying upon prior transaction data by product and total amount spent.

Deaton fails to disclose storing movie showings data and targeting for movie theaters.

Smith is directed to a method and system for determining ticket availability. Title. Smith discloses “[a] system and method for determining the availability of a restricted class of tickets is provided. In one embodiment, an initial number of restricted tickets are made available for purchase. Purchase orders are received and processed by an event server. The event server is configured to assess the volume of sales and determine whether sales meet expectations. If expectations are not met, the server takes steps to change the availability of restricted tickets. Further, embodiments of the invention provide methods and systems for determining the optimal selling price and availability of restricted tickets based on revenue goals, supply/demand, event capacity, and other factors.” Abstract.

Specifically, Smith is directed to marketing ticket sales, such as tickets for movie theaters. Smith discloses using a computer model to dynamically adjust the price for remaining tickets for an event based upon rate of sale and time remaining to the event.

Smith fails to disclose collecting information relating to sales other than ticket sales and fails to disclose collecting information pertaining to individual customers.

In summary, claims 44 and 58 as amended recite subject matter that is neither disclosed, nor made obvious by either Deaton or Deaton in view of Smith. In particular: (1) transactions data defining transactions associated with said at least one movie theater store including purchase of tickets for showing of movies and purchase of other items sold by said movie theater store; (2) said first computer system [for a movie theater] database storing at least one of the following movie ticket sales information: ratings of movies viewed, time of day for movies viewed, frequency of movies viewed, and delay in time of movies viewed in relation to movie release date and associating said movie ticket sales information with a customer ID; and (3) determining an incentive offer to a consumer with said customer ID based upon at least one of said other items

sold by said movie theater store, said movie ticket sales information and said transaction data for transaction transacted through said second POS computer system;

Moreover, the examiner has not submitted sufficient motivation for combining Deaton and Smith in order to make obvious the limitations of claims 44 and 58.

**B. Deaton and Smith fail to Disclose Limitations of Amended Claim 44's Recitation "said first computer system database storing at least one of the following movie ticket sales information: ratings of movies viewed, time of day for movies viewed, frequency of movies viewed, and delay in time of movies viewed in relation to movie release date and associating said movie ticket sales information with a customer ID"**

Claims 44 and 58 have been amended to include capturing a movie customer's non-movie ticket purchases or a movie customer's movie viewing characteristics, such as ratings of movies viewed, time of day for movies viewed, frequency of movies viewed, and delay in time of movies viewed in relation to movie release date and associating said movie ticket sales information with a particular consumer.

In the office action mailed January 28, 2009, the examiner admits on page 3 line 22 through page 4 line 5 that:

Deaton does not teaches [sic] stored movie showings data for at least one movie theater store defining movie showings in at least one theater in said at least one movie theater store and stored transactions data defining transactions associated with said at least one movie theater store including at least one of purchase of tickets for showing of movies and purchase of other items sold by said movie theater store.

Smith discloses determining ticket availability and ticket price. Smith does not disclose discerning if one customer purchases all 400 tickets for a movie showing or if 200 customers each purchase two tickets each for a movie showing. In short, Smith discloses focusing on ticket supply and not on the customer who is buying the tickets.

Smith discloses providing tickets or a confirmation number in advance of a customer gaining admittance to an event. Smith paragraph [0027]. Smith does not disclose a POS system at a movie theater where a customer can purchase an item other than a ticket for admission. Therefore, Smith cannot and does not teach or disclose “collecting information regarding purchase of other items sold by said movie theater store”, as recited in claims 44 and 58.

Moreover, Smith does not disclose or make obvious collecting and processing information regarding a movie customer’s movie viewing characteristics. Furthermore, Smith does not disclose or make obvious associating any information with a particular customer.

For example, Deaton in view of Smith does not disclose or make obvious the following limitations from claims 44 and 58:

- transactions data defining transactions associated with said at least one movie theater store including purchase of tickets for showing of movies and purchase of other items sold by said movie theater store;

- said first computer system database storing at least one of the following movie ticket sales information: ratings of movies viewed, time of day for movies viewed, frequency of movies viewed, and delay in time of movies viewed in relation to movie release date and associating said movie ticket sales information with a customer ID;

- determining an incentive offer to a consumer with said customer ID based upon at least one of said other items sold by said movie theater store, said movie ticket sales information and said transaction data for transaction transacted through said second POS computer system;

Therefore, Smith does not disclose collecting viewer information as noted by the examiner on page 4 line 16 of the office action, nor does Smith disclose anything that can be combined with Deaton to provide incentives based on a viewer’s previous history as claimed by the examiner on 4 lines 17-18 of the office action. For these reasons, the rejections of claims 44 and 58, and claims 45-58 which depend therefrom are improper and should be withdrawn.

**C. There is no Motivation to Combine Deaton with Smith**

The examiner's motivation for combining Deaton with Smith is stated on page 4 lines 14-18 of the office action:

Therefore, it would have been obvious to the one ordinary skill [sic] in the art at the time of the invention [sic] to include a feature that s[t]ores movie information along with viewer information as taught by Smith in the system of Deaton in order to provide incentives based on viewers previous history [sic] to increase sales.

Smith paragraphs [0030] and [0031] discloses the following:

[0030] At step 208 the method 200 processes the user's selections (e.g., event selection, ticket types selections, number of tickets, delivery selections, etc.) and updates the displayed information. In general, step 208 includes transmitting the user input information (e.g., ticket type and properties) from the TCM 104 to the server 102. The server 102 is configured to determine ticket availability and price. A response is then sent from the server 102 back to the TCM 104 which indicates whether the requested ticket is available and at what price. One embodiment of method by which the event server 102 determines availability and price is described below with reference to FIG. 3.

[0031] After the user makes his or her selections, the method 200 proceeds to step 210 and queries whether the user has elected to purchase the selected ticket(s). If so, a validation process is executed at step 213. The validation process may include validation of any of the user provided information, particularly the credit card information in the case of credit card purchase. At step 214, the method 200 queries whether the validation was successful. If not, the method 200 exits at step 212. If the information is validated, the method 200 dispenses the tickets at step 216. Dispensation may involve printing and dispensing the ticket via the dispenser 112, mailing the ticket to a user-provided address, or otherwise issuing the ticket

according to the user selected options. The ticket may then be used subject to the conditions/restrictions selected by the user. Illustrative restrictions are described above.

In response, Smith does not disclose capturing or storing viewer information. Therefore, the examiner incorrectly concludes that it would have been obvious to combine Deaton and Smith, because the teachings of Smith do not support “a feature that s[t]ores movie information along with viewer information as taught by Smith”, as asserted by the examiner a page 4 line 16 of the office action dated January 28, 2009. Therefore, there is no stated basis to modify Deaton to include “a feature that s[t]ores movie information along with viewer information” as asserted.

Since the examiner has not stated a proper motivation for combining Deaton and Smith in order to cure Deaton’s admitted deficiencies, the rejections of claims 44 and 58, and claims 45-58 which depend therefrom, are improper and should be withdrawn.

**D. The Examiner’s Reliance upon Deaton to Disclose Linking a Movie Theater POS CS and Another Store’s POS CS is Improper**

In the office action mailed January 28, 2009 at page 7 line 19 through page 8 line 4, the examiner asserts that:

With respect to claim 45, Deaton in view of Smith teaches all elements of claim 44, furthermore, Deaton teaches the system further comprising code for linking transaction data for transactions transacted in the first POS computer system with transaction data for transactions transacted in the second POS computer system based at least in part upon geographic proximity of stores in which transactions occurred (Col. 2, lines 15-24, which teaches real-time a product purchasing received from a remote location).

In response, the examiner improperly relies upon Deaton to disclose linking a movie theater POS CS and a non movie theater retail store POS CS. Specifically, the examiner relies upon Deaton column 2 lines 15-24 for such a disclosure, which states that:

According to one embodiment of the invention, a method for use in marketing includes receiving at a remote location through the Internet, substantially real-time a product purchase information from a retail store in conjunction with an identification code of a customer purchasing the products at a point-of-sale. The method also includes generating at the remote location an incentive to be communicated to the identified customer and initiating communication or data relative to the incentive to the identified customer at the point-of-sale.

In fact, Deaton column 2 lines 15-24 teaches only that the remote computer receives the POS data from the POS CS, analyzes it, and sends back a signal to the POS CS. Nothing in Deaton column 2 lines 15-24 suggests that the remote computer is a POS CS for a different type of store. Certainly, Deaton does not disclose linking a movie theater POS CS and a non-movie theater retail store POS CS. Accordingly, nothing in Deaton and Smith suggest the limitations of claims 44 et seq.

**VI. The Rejections of Claims 54-56 as Being Unpatentable Over Deaton in View of Smith and Further in View of Klarfeld are Improper and Should be Withdrawn**

In response, claims 54-56 each depend from independent claim 44. Since the rejections of claim 44 are improper for the reasons stated above, the rejections of claims 54-56 are improper for the same stated reasons. Therefore, the rejections of claims 54-56 are improper and should be withdrawn.

Respectfully submitted,

6/24/2009

/BruceMargulies#64175/

Date

Bruce T. Margulies

Registration No. 64,175

Attorney of Record

BTM

Date/Time: June 24, 2009 (1:35pm)

Y:\Clients\Catalina\PIP-137-DIAM\PIP137DIAM-US\Drafts\SignedResponse\_PIP137DIAMU-US\_6-24-2009.wpd